

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**TINA McDONALD, individually and  
as Personal Representative of the  
Estate of Jesse Barnes, Jr., deceased,  
JESSE EUGENE BARNES, individually  
and JEFFREY J. BARNES, individually,**

**Plaintiffs,**

**v.**

**No. CIV-15-0488 KG/LAM**

**WERNER ENTERPRISES, INC.,  
a Nebraska Corporation and  
VERNON LOVELLE COLBERT,  
an individual,**

**Defendants.**

**ORDER DENYING MOTION FOR SUBSTITUTION  
OF PERSONAL REPRESENTATIVE**

**THIS MATTER** is before the Court on Plaintiff Tina McDonald's *Unopposed Motion for Substitution of Personal Representative to Pursue Wrongful Death Claim in Accordance With NMSA 1978 § 41-2-1 et seq. (Doc. 32)*, filed September 25, 2015. In the motion, Plaintiff McDonald asks the Court to enter an order pursuant to N.M.S.A. 1978 § 41-2-3 substituting Jesse Eugene Barnes in her place as the Personal Representative of the Estate of Jesse Barnes, Jr. for the purpose of this wrongful death action. Plaintiff McDonald, however, provides no citation that states that this Court has either the jurisdiction or authority to appoint or substitute a personal representative pursuant to this state statute, and this Court is unaware of any such authority. Therefore, having considered the motion and relevant law, the Court **FINDS** that the motion is not well-taken and shall be **DENIED** as having been filed in the wrong court.

**IT IS THEREFORE ORDERED** that Plaintiff McDonald's *Unopposed Motion for Substitution of Personal Representative to Pursue Wrongful Death Claim in Accordance With NMSA 1978 § 41-2-1 et seq.* (Doc. 32) is **DENIED** as having been filed in the wrong court. Plaintiff McDonald may file this motion in state court, and shall notify the Court if Jesse Eugene Barnes is substituted as the Personal Representative of the Estate of Jesse Barnes, Jr.

**IT IS SO ORDERED.**

  
**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**